

House of Lords (Removal of Bishops) Bill [HL]

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Provide for bishops of the Church of England no longer to be entitled to membership of the House of Lords.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

1 Exclusion of bishops

- (1) No-one shall be a member of the House of Lords by virtue of being a bishop or Archbishop of the Church of England.
- (2) No bishop or Archbishop of the Church of England is entitled to receive, in that capacity, a writ of summons to attend, or sit and vote in, the House of Lords. ²
- (3) Nothing in this section prevents a person who is, or has been, a bishop or Archbishop of the Church of England from receiving, and exercising the entitlements under, a peerage for life in accordance with section 1 of the Life Peerages Act 1958. ³
- (4) Nothing in this section prevents a person who is, or has been, a bishop or Archbishop of the Church of England from being permitted to enter the House of Lords for the purpose only of leading prayers in accordance with arrangements made by that House (but arrangements of that House may not permit a present or former bishop or Archbishop to attend, sit or vote in, speak or otherwise participate as a member in proceedings of that House).

¹ Drafting Note: This formula is modelled, for the sake of relying on legal precedent, on section 1 of the House of Lords Act 1999 (“No-one shall be a member of the House of Lords by virtue of a hereditary peerage”). The entitlement of bishops to sit in the House of Lords arises by virtue of ancient usage and statute: the proposition in this subsection is enough on its own to end that entitlement, but the clause adds additional provision designed to avoid challenge of the kind that was brought (unsuccessfully) in relation to hereditary peers’ writs, following the 1999 Act; clause 2 also makes consequential amendment of the statute book to reflect the effect of this clause.

² Drafting Note: This provision is modelled on s.1(2) of the Life Peerages Act 1958 (“A peerage conferred under this section shall, during the life of the person on whom it is conferred, entitle him ... to receive writs of summons to attend the House of Lords and sit and vote therein accordingly”).

³ Drafting Note: Present practice is for the Prime Minister to recommend the Archbishop of Canterbury, the Archbishop of York, and occasionally other bishops, for a life peerage on their retirement, among the former public office-holders recommended for peerages. It is not necessarily inconsistent with the disestablishment principle underpinning this Bill for it to continue to be possible for a present or former Archbishop, or any other present or former bishop, from being made a life peer either by the Prime Minister on the bishop or Archbishop’s retirement, or on a merit-based recommendation of the House of Lords Appointments Commission.

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2 Consequential provisions

(1) In the enactment formula used for Acts passed after the passing of this Act (other than Acts passed in accordance with the Parliament Act 1911), the phrase “, by and with the advice and consent of the Lords and Commons,” is to be used in place of the present phrase “by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,”.

(2) The following enactments cease to have effect—

(a) the Lords Spiritual (Women) Act 2015;

(b) in section 41 of the Constitutional Reform and Governance Act 2010 (tax status of MPs and members of the House of Lords), subsection (6)(b) (members entitled to receive writs of summons to attend the House of Lords by virtue of being an archbishop or bishop); but this paragraph is without prejudice to the continued application of that provision in relation to tax years beginning before the commencement of this Act;

(c) in section 1 of the House of Commons (Removal of Clergy Disqualification) Act 2001 (removal of disqualification of clergy), subsection (2) (Lords Spiritual disqualified from being Member of House of Commons);

(d) in section 2 of the Welsh Church Act 1914 (ecclesiastical corporations and bishops), subsection (3) (writs of summons to be issued to bishops not disqualified by the 1914 Act for sitting in the House of Lords);

(e) the Bishops Act 1878; 4

(f) in section 5(3) of the Bishops Designation Act 1869 (relative positions of bishop and bishop coadjutor) the words “, or acquire any title to sit in the House of Lords”; and

(g) section 3 of the House of Lords Precedence Act 1539 (places of the Archbishops and Bishops).

⁴ Drafting Note: Section 5 of the 1878 Act continues to have significant effect, limiting the number of bishops who are entitled to seats in the House of Lords at any one time.

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3 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland. ⁶
 - (2) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.
 - (3) This Act may be cited as the House of Lords (Removal of Bishops) Act 2020.
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⁵ Drafting Note: Commencement by Appointed Day Regulations makes implementation uncertain; this formula gives a standard interval for preparation and ensures implementation; no transitional provisions should be required – on the day of commencement bishops will simply cease to be entitled to attend the House of Lords, and any transitional provisions in relation to expenses, allowances, access to facilities and the like will fall to be determined by the House in accordance with its Standing Orders and other arrangements. (In particular, House of Lords Standing Order No. 6 states that bishops to whom a writ of summons has been issued are not Peers but are Lords of Parliament. When sitting in the House of Lords, such bishops are “Lords Spiritual” – changes will be needed to the Standing Orders in due course in consequence of this Bill when it becomes an Act, but the Bill will have effect in its own terms whether or not those changes are made.) An alternative approach would be to follow the Lords Spiritual (Women) Act 2015 by providing for commencement “on the day Parliament first meets following the first parliamentary general election after this Act is passed”; that has a certain logic to recommend it in terms of Parliamentary rhythm, but it could amount to a considerable delay in commencement which might be thought undesirable.

⁶ Drafting Note: This is a wholly non-devolved bill and no Legislative Consent Motions will be required in the devolved legislatures.

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EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the House of Lords (Removal of Bishops) Bill.

- These Explanatory Notes have been prepared in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

Overview of the Act

1. The Bill has a single purpose, which is to bring to an end the practice according to which 26 bishops of Church of England are entitled at any one time to sit as members of the House of Lords.

Policy background

2. The two Church of England Archbishops and 24 of its other diocesan bishops are entitled to sit in the House of Lords, as the Lords Spiritual. They do so by virtue of ancient usage and statute. Five of the 26 automatically receive writs of summons to attend the House of Lords on the basis of the sees they occupy (Canterbury, York, Durham, London and Winchester; the five “ex officio sees”). The remaining 21 are issued with writs of summons on the basis of seniority (i.e. length of tenure as a diocesan bishop) when a vacancy arises. This mechanism is set out in section 5 of the Bishops Act 1878. ⁷ The Lords Spiritual (Women) Act 2015 makes arrangements to accelerate the entry of female bishops to the House of Lords for a 10-year period.

Territorial application of the Act in the UK

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3. Clause 3(2) of the Bill provides that it extends to England and Wales, Scotland and Northern Ireland, since the House of Lords is part of the Parliament of the United Kingdom; however, it relates only to bishops of the Church of England.

⁷ Drafting Note: This passage of the Explanatory Notes is taken from the Cabinet Office’s Explanatory Notes to the Lords Spiritual (Women) Act 2015.

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Commentary on provisions of Bill

Clause 1: Exclusion of bishops

4. This clause enacts the proposition that nobody is entitled to membership of the House of Lords by virtue of being a bishop or Archbishop.

5. The clause also clarifies that the exclusion of the bishops from membership of the Lords as of right does not prevent them from being made life peers (as is presently customary for, in particular, the Archbishops of Canterbury and York following retirement).

6. The clause also clarifies that it would still be open to the House of Lords to make arrangements for a bishop to lead prayers at the start of each day's sitting of the House. In the House of Commons, the Speaker's Chaplain usually reads prayers at the beginning of each sitting, without being a member of the House; and having a bishop or other member of the clergy enter the House of Lords only for the purpose of reading prayers would be an equivalent practice. There would be no entitlement to read prayers: it would be entirely a matter for the two Houses, following the enactment of this Bill, to choose whether or not they wished to have a bishop or other Church of England cleric read prayers.

Clause 2: Consequential provisions

7. Clause 2 makes provisions consequential on clause 1.

8. The most far-reaching consequential amendment affects the enactment formula of Acts of Parliament. At present, most Acts are preceded by the formula "BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—". The clause amends this enactment formula so as to omit reference to the Lords Spiritual.

9. Finance Acts and certain other fiscal Acts are preceded by the following enactment formula: "Most Gracious Sovereign WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and to grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—". The clause amends this formula, again to remove the reference to the Lords Spiritual.

10. Bills passed under the Parliament Act 1911 omit reference to the House of Lords in their enactment formula (because the 1911 Act permits the Commons to by-pass the Lords for certain Acts rejected in the previous Session by the Lords). Their enactment formula is as follows: "Be it enacted by The Queen's most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Acts 1911 and 1949, and by the authority of the same, as follows:—"; so there is no need for the clause to make any amendment in these cases.

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11. The remainder of the clause repeals provisions which relate to the Lords Spiritual, which will no longer have any effect once clause 1 comes into force.

Commencement

Clause 3 provides for the Bill to come into force two months after Royal Assent.

European Convention on Human Rights

The entitlement to sit in the House of Lords is not a property right for the purposes of Article 1 of the First Protocol to the European Convention on Human Rights; so the Bill does not adversely affect the property rights of the bishops (and, if it did, the interference would be compatible with the Convention as being justified on public interest grounds).

Article 9 of the Convention protects the freedom of thought, conscience and religion, and includes freedom to change religion or belief and freedom, either alone or in community with others and in public or private, to manifest religion or belief, in worship, teaching, practice and observance. The Bill does not inhibit the religious expression of bishops or of anyone else, as it affects only the legislative and parliamentary functions of bishops and not any part of their religious functions.

In so far as Article 14 of the Convention requires rights to be protected on a non-discriminatory basis, if anything, the present position is discriminatory against the adherents of religions other than the Church of England, and against those who are ideologically opposed to religion in principle. By removing the special treatment of Church of England bishops the Bill will at least arguably be removing an element of discrimination in the present arrangements.

For these reasons, the Bill is compatible with the Convention Rights within the meaning of the Human Rights Act 1998.

Financial implications

The Bill has no significant impact on public expenditure. It imposes no new charges on public funds. There would be savings of public expenditure as a result of the bishops no longer being entitled to claim attendance allowances and expenses as members of the House of Lords; by reference to recent claims, the savings would be less than £100,000 per year.
